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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: APR 24 2003
EAC 02 030 50567

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Morocco who is seeking classification as a special immigrant, pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that substantial, probative, and reliable uncontradicted evidence submitted by the petitioner clearly establishes that she married her abusive spouse in good faith. Counsel subsequently submits a brief and additional evidence.

8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
> >
> > (F) Is a person of good moral character;
> >
> > (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

[redacted]

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner entered the United States as a visitor on October 31, 1999. The petitioner married her permanent resident spouse on June 2, 2001 at Queens, New York. On October 22, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her permanent resident spouse during their marriage.

8 C.F.R. § 204.2(c)(1)(i)(H) requires the petitioner to establish that she entered into the marriage to the citizen or lawful permanent resident in good faith.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to the director's request for additional evidence on February 8, 2002. He noted that although the seven affidavits furnished established that the petitioner and her spouse resided together, none established that she married her spouse in good faith.

On appeal, counsel submits documents previously furnished and contained in the record of proceeding, including affidavits from acquaintances, which had been addressed by the director in his decision. He also submits an affidavit from a Domestic Violence Counselor dated August 8, 2002, and other documents establishing that the petitioner had been the subject of extreme cruelty, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H). The director, however, did not find extreme cruelty to be lacking in this case.

Based on the director's findings that all the affidavits furnished state that the petitioner resided with her spouse, and that none state that she married in good faith, counsel subsequently submits revised affidavits from the petitioner's seven acquaintances now stating that the petitioner married her spouse in good faith. The affiants raise questions of credibility when asserting a substantially revised claim to eligibility on appeal. Only after the application was denied did the affiants claim that the petitioner married in good faith. Further, none of the affiants state that they have personal knowledge of the relationship, nor did they submit evidence to support this new claim.

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. § 204.2(c)(2)(i).

These affidavits, without supporting documentary evidence, are insufficient to establish the existence of a good-faith marriage. Furthermore, while these affidavits and other documents in the record establish that the petitioner and her spouse had resided together as provided in 8 C.F.R. § 204.2(c)(1)(i)(D), the

petitioner has failed to establish that she entered into the marriage to the permanent resident in good faith, pursuant to 8 C.F.R. § 204.2(c)(1)(i)(H).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.